E-Systems, Inc. *and* Don J. Jones *and* Jo Lynn Rust

United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, CLC, Local 967 *and* Dennis E. Hale *and* Don J. Jones *and* Jo Lynn Rust. Cases 16–CA–14363, 16–CA–14407, 16–CB–3461, 16–CB–3510, and 16–CB–3527

March 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon charges filed by Dennis E. Hale on October 20, 1989, and by Don J. Jones on December 28 and 29, 1989, the General Counsel of the National Labor Relations Board issued a consolidated complaint and notice of hearing on January 25, 1990, alleging that Respondent United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, CLC, Local 967 (the Union) violated Section 8(b)(1)(A) and (2) of the Act, respectively, by refusing to process dues-checkoff revocation requests and by causing Respondent E-Systems, Inc. (the Employer) to refuse to honor the requests, and that the Employer violated Section 8(a)(1), (2), and (3) of the Act by failing to honor Don J. Jones' checkoff revocation request. The Respondents filed timely answers admitting in part and denying in part the allegations in the complaint.

On February 16, 17, and 20, 1990, the General Counsel, the Respondents, and Charging Parties Jones and Hale entered into a stipulation of facts and moved to transfer the case to the Board. The parties stated that the stipulation and the attached exhibits constituted the entire record in this proceeding and that they waived a hearing and a decision by an administrative law judge.

On additional charges filed by Jo Lynn Rust on January 29, 1990, the General Counsel issued a consolidated complaint and notice of hearing on February 28, 1990. The Regional Director for Region 16 issued an order consolidating Cases 16–CB–3461, 16–CA–14363, 16–CB–3510, 16–CA–14407, and 16–CB–3527. The Respondents filed timely answers admitting in part and denying in part the allegations in the consolidated complaint.

On March 22 and 30, 1990, the General Counsel, the Respondents, and Charging Parties Jones, Hale, and Rust entered into an amended stipulation of facts.

On April 6, 1990, the Board approved the original stipulation and transferred the proceeding to the Board for issuance of a Decision and Order.

On April 6, 1990, the parties filed an amended motion to transfer the second stipulation to facts to the Board.

On April 11, 1990, the General Counsel, on behalf of himself and the Respondents, filed with the Board a joint motion to consolidate Cases 16–CB–3461, 16–CA–14363, 16–CB–3510, 16–CA–14407, and 16–CB–3527. In the motion, the General Counsel stated that the legal issues and factual framework pertaining to the charges filed by Hale, Jones, and Rust were exactly the same. The General Counsel also requested an extension of time for the filing of briefs. The Board granted this extension request, and the General Counsel and the Respondent Union subsequently filed briefs. In these circumstances, we grant the General Counsel's motion to consolidate, approve the amended stipulation of facts, and grant the amended motion and transfer the proceeding to the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer, a Delaware corporation with a facility in Greenville, Texas, has been engaged in the manufacture of high technology, nonconsumer electronic equipment. During the 12-month period preceding execution of the stipulation, a representative period, Respondent Employer, in the course and conduct of its operations, purchased and received goods, materials, equipment, and supplies valued in excess of $50,000 directly from points located outside the State of Texas.

We find that the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

At all material times, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, CLC (the International) and the Respondent Union, by virtue of Section 9(a) of the Act, have been the exclusive bargaining representatives of certain employees of the Respondent Employer, including Dennis E. Hale and Don J. Jones, for purposes of collective bargaining with respect to rates of pay, hours of employment, and other terms and conditions of employment.

Current and previous collective-bargaining agreements between the Respondent Employer, the International, and the Respondent Union, which have been in force and effect from August 22, 1985, to at least the date the stipulation was executed, provide under article II, section 1.(a) as follows:

> Upon written authorization from each union member, the Company agrees to deduct the initiation fee and regular monthly dues of the Union from his wages.

Article II, section 1.(f) of the contract provides that:

> [r]equests for withdrawal from the check-off list must be made not more than twenty (20) and not less than ten (10) days prior to the anniversary date of membership or the termination date of this Agreement, which ever occurs first.[1]

On about August 22, 1985, January 22, 1988, and February 9, 1988, respectively, Hale, Jones, and Rust executed checkoff authorization cards[2] authorizing the Respondent Employer to deduct from their wages ''membership dues including an initiation or reinstatement fee and monthly dues'' and to remit them to the Respondent Union.

About August 28, 1989, Hale mailed to the Respondent Union's Greenville, Texas office a letter requesting to resign from the Union effective immediately and to ''remove [his] name from the membership roll of Local 967, and discontinue payroll deductions for [his] monthly dues.'' He personally delivered a copy of the letter to the Respondent Employer about August 24, 1989. About the same day, Jones and Rust both mailed to the Respondent Union letters tendering their resignations from membership. Hale's and Jones' letters were received by the Union on August 31, 1989.[3] Rust's letter additionally requested that no future dues be withheld from her paycheck. We find that these requests for dues cancellations were not timely under the terms of the dues-checkoff authorizations or under article II, section 1.(f), of the collective-bargaining agreement.

By separate letters dated October 11, 1989, the Respondent Employer responded to Hale's, Jones', and Rust's letters stating that

> [t]he Union has informed E-Systems that your request for withdrawal will be honored by the Union and as a result all rights and privileges of membership in the U.A.W. will cease. However, the Union has also informed the Company that you must continue paying your Union dues for the completion of your anniversary year of membership. . . .

Respondent Employer also stated that dues would be collected through August 1990 for Hale and through February 1990 for Jones and Rust. We find that the Respondent Union has accepted Hale's, Jones', and Rust's resignation requests, but has refused to have their dues deductions stopped.

B. *Contentions of the Parties*

The General Counsel argues that both Respondents' refusals to discontinue dues deductions for Jones' and Hale's, and Rust's dues-checkoff revocations, and the Respondent Union's refusal to honor Hale's request to discontinue his dues deduction, after their effective resignations from membership are unlawful restrictions on their right to resign from union membership under the Board's holding in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), affirmed by the U.S. Supreme Court in *Pattern Makers League v. NLRB*, 473 U.S. 95, 107 (1985).

Alternatively, the General Counsel contends that, even if the resignations from union membership did not also automatically revoke the checkoff authorizations, the resignations nonetheless reduced the amount properly owing as union membership dues to zero. Under this view, the Respondent Employer unlawfully continued to deduct any amount greater than zero from Hale's and Rust's pay after their resignations, and the Respondent Union unlawfully continued to accept and cause the Respondent Employer to deduct any amount greater than zero from the pay of all three individuals.

Finally, the General Counsel, relying on *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984), argues that, by the express language of the the dues-checkoff authorization and assignment, authorizing deductions by the Respondent Employer and remittance to the Respondent Union of ''such sums as the

[1] The portions of the contract set forth in the parties' stipulation do not include a union-security clause. We take administrative notice of the fact that, as permitted by Sec. 14(b) of the Act, Texas, where the Respondent Employer's Facility is located, has a right-to-work law that prohibits the inclusion of union security clauses in collective-bargaining agreements.

[2] The checkoff authorization form of each employee reads, in pertinent part, as follows:

> I hereby assign to Local Union No. *967*, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), from any wages earned or to be earned by me or a regular supplemental unemployment benefit payable under its supplemental unemployment benefit plan as your employee (in my present or in any future employment by you), such sums as the Financial Officer of said Local Union No. *967* may certify as due and owing from me as membership dues, including an initiation or reinstatement fee and monthly dues in such sum as may be established from time to time as union dues in accordance with the Constitution of the International Union, UAW. I authorize and direct you to deduct such amounts from my pay and to remit same to the Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.
>
> This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of such succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union, not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Company and the Union whichever occurs sooner.
>
> This authorization is made pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947 and otherwise.

[3] The record does not disclose when Rust's letter was received by the Respondent Union.

Financial Officer of said Local Union 976 may certify as due and owing from [them] as membership dues, including initiation and reinstatement fee and monthly dues,'' dues payment is a quid pro quo for union membership (emphasis added by the General Counsel). Following this theory, the General Counsel reasons that continued refusals by the Respondents to honor resignations and revocations are unlawful.

The Respondent Union contends that ''[t]he employees in this case voluntarily signed the checkoff authorizations, knowing they were irrevocable, except at stated intervals.'' Because of the restrictions on revocability in the authorization agreement itself, the Respondent Union urges the Board to find the resignations ineffective. The Respondent Union further argues that *Pattern Makers* has no applicability to this case. The acceptance by the Board of the General Counsel's theory, the Respondent Union continues, is to render virtually all checkoff authorizations in ''right to work'' states revocable at will and to undermine the accommodation between the interests of labor and management struck by Congress in Section 302 of the Act.

III. DISCUSSION

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991), after consideration of each of the same contentions that are raised by the parties in the instant proceeding, we recently held that ''[w]e will require clear and unmistakable language waiving the right to refrain from assisting a union, just as we require such evidence of waiver with regard to other statutory rights.'' Consistent with this principle, *Lockheed* formulated the following rule of construction for dues-checkoff authorization revocation provisions in the absence of a lawful union-security agreement:

> [W]e will construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing.* We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has had a change of heart and wants to revoke the authorization. [Id. at 328–329.]

Applying this analysis to the stipulated facts in this case, we find that in signing the authorizations at issue here, Hale, Jones, and Rust did not clearly and unmistakably waive their rights to refrain from assisting the Respondent Union for periods when they were not members. All they clearly agreed to do was to allow certain sums to be deducted from their wages by the Respondent Employer and remitted to the Respondent Union for payment of their ''membership dues, including an initiation or reinstatement fee and monthly dues.'' They did not clearly agree to have deductions made even after they had submitted their resignation from membership.

By continuing to insist that the Respondent Employer deduct the union dues from Hale's, Jones', and Rust's wages after they communicated their intent to resign their membership and to revoke their authorizations, the Respondent Union is treating them as though they are still members of the Respondent Union or have agreed to pay dues even after their memberships have ceased. We find that this constitutes unlawful restraint on their Section 7 right to refrain from engaging in concerted activity. The Respondent Union thereby violated Section 8(b)(1)(A) of the Act. Because the Respondent Union sought to cause the Respondent Employer to continue to make these postresignation deductions, the Respondent Union also violated Section 8(b)(2) of the Act. Because the Respondent Employer notified Jones and Rust that it would continue to make these deductions at the Union's request (and we infer that it has continued to make these deductions), the Respondent Employer violated Section 8(a)(1), (2), and (3) of the Act.

CONCLUSIONS OF LAW

1. By refusing to honor Hale's, Jones', and Rust's revocation of dues deduction authorization requests and doing so solely on the authority of a previous checkoff authorization which did not clearly and explicitly provide for postresignation dues obligations in conjunction with a collective-bargaining agreement provision other than a lawful union-security clause, the Respondent Union has restrained and coerced employees in their exercise of Section 7 rights and violated Section 8(b)(1)(A) of the Act.

2. By causing and/or attempting to cause the Respondent Employer to continue to deduct membership dues by checkoff solely on the authority of a previous checkoff authorization from employees who had later submitted written resignations from membership in the Respondent Union, the Respondent Union has violated Section 8(b)(2) of the Act.

3. By notifying employees that it refuses, and by refusing to honor the requests of Don J. Jones and Jo Lynn Rust to revoke their checkoff authorization, at the Union's request, and solely on the authority of checkoff authorizations from these employees who thereafter had submitted written resignations from membership in the Respondent Union, the Respondent Employer has violated Section 8(a)(1), (2), and (3) of the Act.

REMEDY

Having found that the Respondents have engaged in the unfair labor practices described above, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents must give full force and effect to the Charging Parties' revocation of their checkoff authorizations. The Respondents, jointly and severally, shall make them whole for all moneys deducted from their wages following the date of their resignations, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

It is ordered that Cases 16–CB–3461, 16–CA–14363, 16–CB–3510, 16–CB–14407, and 16–CB–3527 are consolidated.

IT IS FURTHER ORDERED that the stipulation filed with the Board on April 6, 1990, is approved and made a part of the record of this proceeding.

IT IS FURTHER ORDERED that the proceeding is transferred to and continued before the Board in Washington, D.C.

IT IS FURTHER ORDERED that the Respondents shall comply with the Order of the National Labor Relations Board set forth below.

A. Respondent United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, CLC, Local 967, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to honor employees' revocations of dues authorization after the employees have resigned their membership in the Union, where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employees and where there is no valid union-security clause in effect.

(b) Causing or attempting to cause an employer to continue to deduct membership dues from employee wages after the employees have resigned union membership, by virtue of a checkoff authorization which does not clearly and explicitly provide for postresignation dues obligations and where there is no valid union-security clause in effect.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole employee Dennis E. Hale, and make whole jointly and severally with Respondent Employer, employees Don J. Jones and Jo Lynn Rust for all moneys deducted from their wages as union dues after the date of their resignations from union membership, with interest as set forth in the remedy section of this decision.

(b) Post at its offices and meeting halls in Greenville, Texas, copies of the attached notice marked ''Appendix A.''[4] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions as set forth in paragraph A,2(b) above, as soon as forwarded by the Regional Director, the attached notice marked ''Appendix B.''

(d) Sign and return to the Regional Director sufficient copies of the notice marked ''Appendix A'' for posting by Respondent Employer at all places where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps it has taken to comply.

B. Respondent E-Systems, Inc., Greenville, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Notifying employees that it refuses, and refusing, to honor their requests for dues-checkoff authorization revocation where those employees have resigned from the Union and no valid union-security clause is in effect where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employees.

(b) Deducting, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees, union membership dues from the wages of employees who have resigned their union membership.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole, jointly and severally with United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, CLC, Local 967, employees Don J. Jones and Jo Lynn Rust for all moneys deducted from their wages as union dues after the date of their resignations from union membership, with interest as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Greenville, Texas facility copies of the attached notice marked ''Appendix B.''[5] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in paragraph B,2(c), above, as soon as forwarded by the Regional Director, copies of the attached notice marked ''Appendix A.''

(e) Mail signed copies of the attached notice marked ''Appendix B'' to the Regional Director for posting by Respondent Union.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps it has taken to comply.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor employees' revocations of dues authorization after employees resign union membership where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employees and where there is no valid union-security clause in effect.

WE WILL NOT cause and/or attempt to cause an employer to continue to enforce dues-checkoff authorizations of employees who have resigned from membership in the Union by virtue of a checkoff authorization which does not clearly and explicitly provide postresignation dues obligations and where there is no valid union-security clause in effect.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act.

WE WILL make whole employee Dennis E. Hale and make whole, jointly and severally with the Employer, Don J. Jones and Jo Lynn Rust for all moneys deducted from their wages as union dues following their resignations from union membership, with interest.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL–CIO, CLC, LOCAL 967

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT notify employees that we refuse, nor will we refuse, to honor their requests for dues-checkoff authorization revocation where these employees have resigned from the Union and no valid union-security clause is in effect where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employees.

WE WILL NOT deduct, by virtue of dues-checkoff authorizations that do not clearly and explicitly impose any postresignation dues obligation on the employees,

[5] See fn. 2, supra.

union membership dues, from the wages of employees who have resigned their union membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL make whole, jointly and severally with United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, CLC, Local 967, employees Don J. Jones and Jo Lynn Rust for all moneys deducted from their wages as union dues after the date of their resignations from union membership, with interest.

E-SYSTEMS, INC.